

REC'D MAR 15 1948

ADDRESS REPLY TO

OFFICE OF THE JUDGE ADVOCATE GENERAL

NAVY DEPARTMENT

OFFICE OF THE JUDGE ADVOCATE GENERAL

WASHINGTON 25, D. C.

AND REFER TO

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13 March 1948

MEMORANDUM

For: Mr. Felix E. Larkin (Office of the Secretary of Defense).

Subject: Proposed bill "To amend section 605 of the Communications Act of 1934 in order to increase the Security of the United States, and for other purposes."

1. Section 605 of the Communications Act of 1934 (48 Stat. 1103; 47 U.S.C. 605) forbids a person engaged in transmitting or receiving interstate or foreign communications by wire or radio from divulging the contents of such communications to other than the addressee. This restriction operates to impede the collection of intelligence in the interests of national security. The Joint Congressional Committee which investigated the attack on Pearl Harbor recommended that steps be taken to insure that this statutory restriction be not permitted to operate to the benefit of an enemy or other forces inimical to the nation's security (Senate Document 244 - 79th Congress).

2. On April 7, 1947, the Navy Department, with the concurrence of the War Department, submitted a proposed draft of remedial legislation to the Director of the Bureau of the Budget for advice as to whether the proposal was in accord with the program of the President. A copy of this submission is enclosed.

3. You will note that the Navy Department's proposed draft would permit the receipt and use for security purposes of communications by wire or radio, under regulations to be approved by the President, by the War (Army) and Navy Departments and by such other agencies of the Government as might be designated by the President as national defense and security agencies.

4. On July 10, 1947, the Assistant Attorney General, in commenting to the Director of the Bureau of the Budget upon the Navy Department's proposal, remarked that the proposal is of such nature as to require the

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utmost discretion in its exercise and recommended that the receipt and use of communications excepted from the provisions of section 605 be limited to the Military Intelligence Division of the War (Army) Department, the Office of Naval Intelligence, and the Federal Bureau of Investigation.

5. On October 15, 1947, the Chairman of the Federal Communications Commission commented upon proposals made by the Navy Department and the Department of Justice by expressing doubt as to the advisability of relaxing the provisions of section 605, and by commenting upon what appears to be a proposal made by the Attorney General quite different in its terms from that contained in the Assistant Attorney General's letter of July 10, 1947.

6. The Navy Department adheres strongly to its former position that a relaxation of the restrictions of section 605 is essential for purposes of national security. The Navy Department feels, too, that the suggestion of the Assistant Attorney General, as set forth in his letter of July 10, 1947, is objectionable in that it unduly narrows the circle of agencies empowered to receive and utilize communications.

7. In addition to the views of the Assistant Attorney General and the Chairman of the Federal Communications Commission, the Navy Department has received advice from the commercial communication companies that the language of the proposed measure does not appear to give them adequate protection from civil suit.

8. The language of the proposal would protect the companies insofar as the application of section 605 and the imposition of a criminal penalty is concerned. In order, however, to protect the companies from civil liability for disclosure of communications which the proposed bill would authorize in the interest of national security, it will be necessary to provide that the companies are authorized to permit such interception, receipt or utilization of communications.

JAG:LC:IHN:wlw

9. After giving consideration to all views and interests which have been laid before the Navy Department in this matter, it is recommended that the following amendment to the Navy Department's original proposal be made as the most practicable method of meeting all objections insofar as possible and at the same time preserving the original purpose for which the bill was designed.

Strike out the proviso and substitute the following in lieu thereof:

"Provided further, That this section shall not apply to the interception, receipt, or utilization, in the interests of national security, by a department or agency of the United States Government which is expressly designated by the President to engage in communication intelligence activities for the United States, or the contents of any communication, by wire or radio, of any foreign government, and all carriers subject to this Act are hereby authorized to permit such interception, receipt, or utilization of the contents of any such communication by wire or radio. The term 'foreign government' as used in this section shall be construed to include in its meaning any person or persons acting or purporting to act for or on behalf of any faction, party, department, agency, bureau, or military force of or within a foreign country, or for or on behalf of any government or any person or persons purporting to act as a government within a foreign country, whether or not such government is recognized by the United States. The term 'communication intelligence' as used in this section shall be construed to mean all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients."

10. It will be noted that the relaxation of the restrictions of section 605 as provided in the amendment herein proposed would apply only to the communications of foreign governments.


G. L. RUSSELL,

Rear Admiral, U. S. Navy,
Acting Judge Advocate General of the Navy.

cc: File, item 84 (Amend
Sec. 605 - Comm. Act, 1934)